

STATE OF IOWA
BEFORE THE PUBLIC EMPLOYMENT RELATIONS BOARD

PAMELA D. ELSBERRY,
Grievant,

and

IOWA DEPARTMENT OF HUMAN SERVICES

ADJUDICATOR'S DECISION

87-MG-04

Appearances

For the Department of Human Services

Janet Phipps, Acting Personnel Director for the Woodward
State Hospital - School
Patsy S. Langerman, Personnel Management Specialist for the
Department of Human Services.

For the Grievant

Pamela D. Elsberry, Grievant

I. JURISDICTION

Pursuant to Chapter 19A Code of Iowa §14 (1986) (S.F. 2175, 71st General Assembly), and 570 - Iowa Administrative Code §12.1 (d) (1986) Pamela D. Elsberry appeals the Department of Human Services's decision to deny her the opportunity to transfer to a vacant "Resident Treatment Supervisor I" position. The grievance hearing was held in Des Moines, Iowa on October 16, 1986. The hearing was tape recorded. The parties did not file briefs.

II. EXHIBITS

Joint Exhibit 1 - Statement of Employee Grievance, dated April 11, 1986, Step 1 Grievance Decision, dated April 14, 1986, and Step 2 Grievance Decision, dated April 23, 1986.

Joint Exhibit 2 - Step 3 Grievance Decision, dated May 8, 1986.

Joint Exhibit 3 - Chapter 10, p. 1 of Merit Employment Rules and Regulations, (570 - Iowa Administrative Code)

Joint Exhibit 4 - Policies, Methods and Procedures memorandum from B. Frances Van Winkle to appointing authorities and personnel representatives, dated February 5, 1982.

III. ISSUE

Whether the Department of Human Services substantially complied with Chapter 19A, Code of Iowa and the rules of the Department of Personnel by recalling Karen Paulsen to a vacant "Resident Treatment Supervisor I" position at the Woodward State Hospital - School without first giving the Grievant and other Resident Treatment Supervisor I employees with greater seniority the opportunity to transfer to the position.

IV. FACTS

The facts of this case are not in dispute.

The Woodward State Hospital - School is divided into a number of different operational units, with each unit serving clients who have been grouped together according to their particular developmental levels. Employees in the "Resident Treatment Supervisor I" (RTS I) and "Resident Treatment Worker I" (RTW I) classifications staff the various units, with each employee assigned to one particular unit, or developmental level, on a regular basis. RTS I personnel are supervisory employees excluded from any collective bargaining unit. RTS I's directly supervise RTW I employees, who are bargaining unit members.

Sometime prior to the spring of 1986, Karen Paulsen, an RTS I, was moved to an RTW I position due to a reduction in force. On or about April 4, 1986, Karen Paulsen was recalled to an RTS I position which became vacant. The unit to which Paulsen was recalled involved clients at a relatively high developmental level. At the time Paulsen was recalled, Pamela Elsberry was an RTS I assigned to a different unit which served clients at a lower developmental level. Elsberry, who had more seniority, or years of continuous service, than Paulsen would like to have transferred to the vacant RTS I position filled by Paulsen.

Elsberry filed the instant grievance on April 11, 1986, alleging that she and other more senior RTS I's should have been given the opportunity to transfer to the vacant RTS I position before Paulsen was recalled to the position.

V. CONCLUSIONS OF LAW

At hearing, the Department of Human Services (DHS) argued that there are no statutory provisions or administrative rules and regulations requiring DHS to utilize seniority principles and/or transfers within the department in filling supervisory vacancies. The only Merit Employment rule regarding transfers provides as follows:

570 - 10.2(19A) Transfer. An appointing authority may transfer an employee. The employee must meet the current minimum qualifications for the class if the position to which transferred is covered by merit system provisions. Transfers may be intra-agency or interagency, and may be voluntary or involuntary. However, an agency may not transfer an employee from a position covered by merit system provisions to a position not covered by merit system provisions without the written consent of the employee regarding the change in coverage. A copy of the consent shall be forwarded by the appointing authority to the director. Transfer of an employee with probationary status to a position covered by merit system provisions shall be in accordance with rule 9.5(19A). 570- Ia. Admin. Code §10.2 (19A), (Effective 07-01-86)

At hearing, the Grievant conceded that the existing statute and rules place no restrictions on the authority of DHS to determine how supervisory vacancies should be filled, but argued that some system should be established to fill vacancies equitably and fairly. In the present case, Elsberry made no claim that Paulsen was not qualified to fill the vacant position, but stated she felt that she was also qualified and should have been given the opportunity to transfer to the position since she had greater seniority. Elsberry stated at hearing that DHS should have some established system for making these decisions -- whether based on seniority, qualifications, evaluations, or some combination thereof -- rather than having total unfettered discretion in filling

vacancies, so that employees can be assured that there is some reasonable basis for the employer's actions.

However reasonable the Grievant's concerns may be, I am mindful that the statute governing my authority in deciding merit grievances provides, in relevant part, that "decisions rendered shall be based upon a standard of substantial compliance with this chapter and the rules of the department of personnel." Chapter 19A Code of Iowa §14 (S.F. 2175, 71st General Assembly).

There is no showing in the present case that DHS has failed to substantially comply with existing law and rules regarding its authority to fill supervisory vacancies. I have no authority to enact a statute or rules establishing the type of guidelines for filling vacancies that the Grievant believes DHS should be required to follow. The more appropriate methods for the Grievant to seek redress are petitioning the legislature for statutory changes, or petitioning the Department of Personnel for the adoption of applicable rules. (See Administrative Procedure Act, Chapter 17A Code of Iowa §7 [1985].)

VI. AWARD

The grievance appeal is dismissed.

DATED at Des Moines, Iowa this 29th day of October, 1986.

M. SUE WARNER, ADJUDICATOR